Ong Boon Hua @ Chin Peng suing (in his own capacity as a representative of all members of Parti Komunis Malaya and other related parties) & Anor v Kerajaan Malaysia

HIGH COURT (KUALA LUMPUR) — CIVIL SUIT NO S4–21–294 OF 2005
BALIA YUSOF J
10 DECEMBER 2009

Civil Procedure — Action — Capacity to sue — Action against Government of Malaysia for defamation — Whether alleged words published in two articles in The Star defamatory — Whether plaintiffs had capacity to commence action

Civil Procedure — Parties — Representative action — Suing in personal capacity and representative of members of Parti Komunis Malaya — Whether representative action could be brought in defamation proceedings — Whether action sustainable

Tort — Defamation — Slander — Allegation that words published in two articles in The Star defamatory — Whether allegations proved to be defamatory — Whether second plaintiff capable of being slandered — Whether plaintiffs disclosed reasonable cause of action

The first and second plaintiffs were the same person. As the first plaintiff, Ong Boon Hua was suing the defendant, the Government of Malaysia, both in his own capacity as well as a representative of all members of the Parti Komunis Malaya ('PKM') and all other related parties. As the second plaintiff, he was suing the defendant, in his capacity as the Secretary General of the PKM. The plaintiffs' complaints were in respect of two allegedly slanderous statements made by the defendant through its Deputy Information Minister Datuk Zainuddin Maidin ('the Minister') which appeared in newspaper articles in *The Star* newspaper on 21 March 2005 and 6 May 2005. It was the plaintiffs' contention that the statements made in those two articles had imputed that the plaintiffs were criminals and had resulted in the character, credit and reputation of the plaintiffs being brought into public scandal, odium and contempt. The plaintiffs also submitted that the two said articles had breached an agreement made between the parties on 2 December 1989 and had created a substantial risk to the course of justice in another action by the plaintiffs against the defendant, which was pending before the High Court in Penang. By way of this action the plaintiffs sought, inter alia, a declaration that the undertakings and pledges made between the

parties in the agreement to terminate hostilities and the administrative arrangement pursuant to the agreement to terminate hostilities both dated 2 December 1989 were valid and binding on the defendant; an injunction to restrain the defendant from further publishing the slanderous words against the plaintiffs; damages and costs. The defendant, in turn, applied to strike out the plaintiffs' action under O 18 r 19 of the Rules of the High Court 1980. It was the defendant's contention that the plaintiffs had no locus standi to institute this action; that the second plaintiff was not capable of being slandered because it did not have legal personality; that the words published were not defamatory and did not refer to any individual; and that there was no breach of the agreement between the plaintiffs and the defendant. In reply, the plaintiffs maintained that this action was not an ordinary case of defamation based on the law of tort and that they had the capacity to bring the action. The issues before the court were whether the words published in the two articles were defamatory; whether any alleged breaches arose from the publication of the slanderous statements; and whether the plaintiffs had the capacity to commence the present action.

Held, dismissing the plaintiffs' claim and allowing the defendant's application:

(1) When applying the law and principles to be applied in striking out applications to the present pleadings it was found that the plaintiffs' action on the breach of the agreement and/or the administrative arrangement was based on slander. In considering the alleged slander it was found that the publications made by the defendant were not defamatory to the defendant but truths in the form of historical facts. As such the plaintiffs' claim was clearly unsustainable as it disclosed no reasonable cause of action (see paras 20–21).

(2) The first plaintiff was suing in his personal capacity as well as a representative of the PKM and all the other relevant parties, but it was unclear who the other relevant parties were. Further, since representative proceedings could not be taken in defamation proceedings the first plaintiff's attempt to bring this action as a representative of all members of the PKM and all other relevant parties was misconceived (see paras 23 & 28).

(3) The PKM is an unlawful society because it is not a society registered under s 7 of the Societies Act 1966 ('the Act'). As such the second plaintiff can only sue in his capacity as the Secretary General of the PKM if s 9(c) of the Act had been complied with. As there was no evidence to show that the second plaintiff had been so declared by the registrar of societies, the second plaintiff lacked capacity (see para 29).

[Bahasa Malaysia summary

Plaintif pertama dan kedua adalah orang yang sama. Plaintif pertama, Ong Boon Hua menyaman defendan, Kerajaan Malaysia, atas namanya sendiri dan juga dalam kedudukannya sebagai wakil kepada kesemua ahli-ahli Parti Komunis Malaya ('PKM') dan pihak-pihak lain yang berkaitan. Sebagai plaintif kedua, dia menyaman defendan, dalam kedudukannya sebagai Setiausaha Agung PKM. Aduan plaintif-plaintif adalah berkaitan dengan dua pernyataan fitnah lisan yang dikatakan dibuat oleh defendan melalui Timbalan Menteri Penerangannya Datuk Zainuddin Maidin ('Menteri') yang diterbitkan dalam artikel surat khabar *The Star* pada 21 Mac dan 6 Mei 2005. Adalah hujahan plaintif-plaintif bahawa pernyataan-pernyataan di dalam kedua-dua artikel mengatakan bahawa plaintif-plaintif adalah penjenayah dan telah menyebabkan keperibadian, kepercayaan dan reputasi plaintif-plaintif menjadi skandal umum, dibenci dan dihina. Plaintif-plaintif juga menghujah bahawa kedua-dua artikel tersebut melanggar perjanjian yang dibuat di antara pihak-pihak tersebut pada 2 Disember 1989 dan telah menimbulkan risiko yang sebenar kepada proses keadilan dalam tindakan plaintif-plaintif yang satu lagi terhadap defendan, yang masih dibicarakan di Mahkamah Tinggi Pulau Pinang. Melalui tindakan ini, plaintif-plaintif memohon, antara lain, satu deklarasi bahawa akujanji dan jaminan yang dibuat di antara pihak-pihak dalam perjanjian untuk membatalkan permusuhan dan penyusunan pentadbiran berikutan perjanjian untuk membatalkan permusuhan yang kedua-duanya bertarikh 2 Disember 1989 adalah sah dan mengikat defendan; satu injunksi untuk menghalang defendan daripada menerbitkan lebih lanjut kata-kata fitnah lisan terhadap plaintif-plaintif; ganti rugi dan kos. Defendan, sebaliknya, memohon untuk membatalkan tindakan plaintif-plaintif di bawah A 18 k 19 Kaedah-Kaedah Mahkamah Tinggi 1980. Defendan-defendan menghujah bahawa plaintif-plaintif tidak mempunyai locus standi untuk memulakan tindakan ini, plaintif kedua tidak boleh difitnah secara lisan kerana ia tidak mempunyai personaliti dari segi undang-undang; bahawa perkataan-perkataan yang diterbitkan tidak memfitnah dan tidak merujuk kepada mana-mana individu; dan bahawa tidak terdapat kemungkiran perjanjian di antara plaintif-plaintif dan defendan. Dalam jawapan mereka, plaintif-plaintif menyatakan bahawa tindakan ini bukanlah kes fitnah yang biasa berdasarkan undang-undang tort dan bahawa mereka mempunyai kapasiti untuk memulakan tindakan tersebut. Isu-isu di hadapan mahkamah adalah sama ada perkataan-perkataan yang diterbitkan di dalam kedua-dua artikel tersebut bersifat memfitnah, sama ada apa-apa kemungkiran yang didakwa timbul daripada penerbitan kenyataan-kenyataan fitnah lisan tersebut; dan sama ada plaintif-plaintif mempunyai kapasiti untuk memulakan tindakan ini.

Diputuskan, menolak tuntutan plaintif-plaintif dan membenarkan permohonan defendan:

(1) Apabila menggunakan undang-undang dan prinsip-prinsip yang perlu digunakan dalam permohonan pembatalan kepada pliding ini, didapati bahawa tindakan plaintif-plaintif terhadap kemungkiran perjanjian dan/atau penyusunan pentadbiran adalah berdasarkan fitnah lisan. Dalam mempertimbangkan fitnah lisan adalah didapati bahawa penerbitan yang dibuat oleh defendan tidak berunsur memfitnah kepada defendan tetapi kebenaran dalam bentuk fakta-fakta sejarah. Oleh itu tuntutan plaintif-plaintif jelas tidak boleh dikekalkan kerana tidak mendedahkan kausa tindakan yang munasabah (lihat perenggan 20–21).

(2) Plaintif pertama menyaman atas namanya sendiri dan sebagai wakil PKM dan lain-lain pihak yang berkaitan, tetapi tidak jelas siapakah pihak-pihak lain yang berkaitan tersebut. Selanjutnya, oleh sebab prosiding perwakilan tidak boleh dibuat dalam prosiding fitnah, cubaan plaintif pertama untuk membawa tindakan ini sebagai wakil kepada kesemua ahli-ahli PKM dan pihak-pihak lain yang berkaitan adalah disalah tanggap (lihat perenggan 23 & 28).

(3) PKM adalah persatuan haram kerana ia bukan persatuan yang didaftarkan di bawah s 7 Akta Persatuan 1966 ('Akta tersebut'). Oleh itu, plaintif kedua hanya boleh menyaman dalam kedudukannya sebagai Setiausaha Agung PKM jika s 9(c) Akta tersebut dipatuhi. Oleh sebab tidak ada keterangan yang menunjukkan bahawa plaintif kedua diisytiharkan sebegitu oleh pendaftar pertubuhan, plaintif kedua tidak mempunyai kapasiti tersebut (lihat perenggan 29).]

Notes

For a case on representative action, see 2(2) *Mallal's Digest* (4th Ed, 2007 Reissue) para 5142.

For cases on capacity to sue, see 2(2) *Mallal's Digest* (4th Ed, 2007 Reissue) paras 39–42.

For cases on slander, see 12 *Mallal's Digest* (4th Ed, 2005 Reissue) paras 596–607.

Cases referred to

Atip bin Ali v Josephine Doris Nunis & Anor [1987] 1 MLJ 82, HC (refd)

Attorney General, Malaysia, The v Chiow Thiam Guan [1983] 1 MLJ 51, HC (refd)

Bandar Builder Sdn Bhd & Ors v United Malayan Banking Corporation Bhd [1993] 3 MLJ 36, SC (refd)

Brahmanna v Ramakrishnama (1894) ILR 18 Madras 250 (refd)

Chen Cheng & Anor v Central Christian Church and another appeal [1996] 1 SLR 313, CA (refd)
Daya v Param Sukh (1888) ILR 11 All 104 (refd)
Electrical, Electronic, Telecommunication and Plumbing Union v Times Newspapers Ltd & Ors [1980] QB 585 (refd)
Golden Century Development Sdn Bhd & Anor v GanHoe & Anor [1983] 1 MLJ 86, FC (refd)
Knupffer v London Express Newspaper Ltd [1944] AC 116, HL (refd)
Sim Kie Chon v Superintendent of Pudu Prison & Ors [1985] 2 MLJ 385, SC (refd)

Legislation referred to

Internal Security Act 1960
Rules of the High Court 1980 O 18 r 19, r 19(1)(a), (b), (d)
Societies Act 1966 ss 7, 9(c)

Tommy Thomas (Raja Aziz Addruse, Leong Cheok Keng and Chan Kok Keong with him) (Leong & Tan) for the plaintiffs.
Amarjeet Singh (Wan Roslan bin Wan Ismail with him) (Senior Federal Counsel, Attorney General's Chambers) for the defendant.

Balia Yusof J:

[1] Enclosure 21 is an application by the defendant to strike out the plaintiff's action under O 18 r 19(1)(a), (b) or (d) of the Rules of the High Court 1980. The affidavit in support is in encl 21A while the affidavit in reply by the plaintiff is in encl 18.

BRIEF FACTS OF THE CASE

[2] The first and the second plaintiffs are the same person. As the first plaintiff he is bringing the suit in his own capacity as well as a representative of all members of the Parti Komunis Malaya and all other related parties. As the second plaintiff, he is suing in his capacity as the Secretary General of the Parti Komunis Malaya.

[3] By an 'Agreement between the Government of Malaysia and the Communist Party of Malaya to Terminate Hostilities' dated 2 December 1989 and an 'Administrative Arrangement between the Government of Malaysia and the Communist Party of Malaya pursuant to the Agreement to Terminate Hostilities' dated 2 December 1989, the plaintiffs and the defendant have agreed to, inter alia, cease all armed activities forthwith.

[4] In consideration for the second plaintiff agreeing to cease all armed activities, the defendant shall assist members of the second plaintiff in order to help them to start their peaceful life afresh. Further, in consideration for the second plaintiff agreeing to terminate all armed activities, it was also agreed that:

(a) all press statements issued by either the defendant or the second plaintiff thereafter shall be in the spirit of the agreement and shall not contain any slanderous terms; and

(b) the defendant shall not apply the Internal Security Act 1960 or any other laws on members of the second plaintiff who have returned to settle down in Malaysia.

[5] Prior to entering into the agreement and the arrangement, there had been five rounds of Tripartite Peace Talks participated by the second plaintiff, the defendant and the Thai Government representatives.

[6] At the Tripartite Peace Talks, there had been undertakings, pledges and/or personal assurances made by the delegates of the defendant to the plaintiffs that 'there would be no mention of surrender but it would be on the theme let the past be the past' and any press release by the Malaysian Government would be played down and there would be no embarrassing statements made against the Communist Party of Malaya.

[7] In a newspaper article which appeared in *The Star* on 21 March 2005, the defendant through its Deputy Information Minister, Datuk Zainuddin Maidin stated that it intends to televise short films on 'the bloody insurgency, which left thousands of security personnel, civilians and communists dead'.

[8] In a newspaper article which appeared in *The Sun* dated 6 May 2005, the defendant through the same Deputy Information Minister, Datuk Zainuddin Maidin stated that the Information Ministry is working with the Malaysia ex-Army Association to produce a special segment on the brutality of the communist terrorists.

[9] As this juncture, it is necessary to reproduce the said two articles which are as follows:

[10] The article in *The Star*:

> Chin Peng not easily forgotten or forgiven
>
> Kuala Lumpur: Retired army major Zainal Omar, 72 describes his reaction to learning that exiled communist leader Chin Peng has launched a last ditch legal battle to return to Malaysia.

'I wept when I read the news', he says, reflecting the mood among former soldiers who lost their colleagues in the communist insurgency of the 1940s and 1950s.

He has not forgiven the communists who killed his father, uncle and seven other family members.

He has vowed to round up former soldiers to picket the Penang High Court when Chin Peng's application is heard. The court date has not been fixed yet.

The response was similar when the Malaysian authorities refused to let Chin Peng return in 2003 to launch his memoirs and visit the graves of his family members.

This new resort to the courts, made also on behalf of 300 to 500 former communists who want to return, is his last chance at permission to enter Malaysia.

But the reaction of retired soldiers and Malaysians who remember the Emergency years says all is not forgiven.

Born Ong Boon in Sitiawan, Perak, the son of migrants from China's Fujian province, Chin Peng gained notoriety for leading the armed insurgency against the British and Malayan governments during the Emergency years from 1948 to 1960.

He was secretary-general of the Communist Party of Malaya (CPM) for 42 years until a peace accord was signed between the communists and the Government in 1989.

Now 81 and living in Thailand, he is also banned from entering Singapore but was given permission for a three-day visit last October to speak at the Institute of South-East Asian Studies.

Soon after his court application was filed last Friday, the Government announced plans to air a series of TV documentaries on the bloody insurgency, which left thousands of security personnel, civilians and communists dead.

The short films, made by RTM, will be aired in the run-up to National Day on Aug 31.

Deputy Information Minister Zainuddin Maidin said the series had been planned earlier and was not reaction to Chin Peng's court case.

Chin Peng's legal bid to return rests on the 1989 peace accord, allowing former CPM members to return if they applied within a year.

He missed that deadline but his lawyer, Darshan Singh Khaira, felt his client had a good case to be allowed home as a citizen and the ongoing debate had been unfair.

'Chin Peng is entitled to due process of law, justice and fairness', he said — The Straits Times/Asian News Network.

[11] The article in *The Sun*:

Some out to make CTs look good

Kuala Lumpur: Some quarters in the country are wrongly trying to make the communist terrorists look good, Deputy Information Minister Datuk Zainuddin Maidin said yesterday.

'One of the ways is by publishing books to revere former CTs as so called heroes', he said after receiving a visit by seven members of the Malaysia Ex-Army Association at his office here.

The association is working with the ministry to produce a special segments on the brutality of the CTs for Warta RTM. It will be aired daily for a month from Aug 1.

Zainuddin said the segment was to instill awareness among the younger generation on the danger of the communist ideology to the country. — Bernama.

[12] The plaintiffs claim that by the words published in the above two articles it means that the plaintiffs had committed a criminal offence punishable by imprisonment and in consequence of which the plaintiffs have been gravely injured in their character, credit and reputation and have been brought into public scandal, odium and contempt. The said articles also created a substantial risk to the course of justice in the plaintiffs' action against the defendant in Originating Summons No 24–298 of 2005 at the High Court in Penang.

[13] The reliefs sought by the plaintiffs are as follows:

(a) a declaration that the 'Agreement between the Government of Malaysia and the Communist Party of Malaya to Terminate Hostilities' dated 2 December 1989 and the 'Administrative Arrangement between the Government of Malaysia and the Communist Party of Malaya pursuant to the Agreement to Terminate Hostilities' dated 2 December 1989 and the said undertakings, pledges and/or personal assurances are valid, enforceable and binding on the defendant;

(b) damages in lieu of or in addition to the declaration;

(c) damages to be assessed;

(d) an injunction restraining the defendant by itself, its agent, and/or servants or otherwise, from further publishing the said or any similar slanders upon the plaintiffs or any other statements made in breach of the agreement and/or the arrangement;

(e) interest on the damages awarded;

(f) costs; and

(g) such further or other reliefs which this honorable court deems fit or proper.

[14] The grounds of the defendant's application are as follows:

(a) the plaintiff has no locus standi to bring this suit;

(b) class action does not apply in this case;

(c) the second plaintiff has no legal personality who can be slandered;

(d) the words published were not defamatory and does not refer to any individual;

(e) the plaintiffs action is against the right to freedom of expression; and

(f) there is no breach of the agreement between the plaintiff and the defendant.

THE PLAINTIFFS' CONTENTION

[15] The plaintiffs in their affidavit in reply state that their action is about their right to prevent the defendant from further slandering their names which the defendant has agreed through the agreement. They claim that this is not a traditional or ordinary case of defamation based on the law of tort and that they have the capacity to bring the action. The plaintiffs submit that there ought to be a full trial of the matter.

FINDINGS OF THE COURT

[16] The principles governing an application under O 18 r 19 has been succintly set out by Mohamed Dzaiddin SCJ in *Bandar Builder Sdn Bhd & Ors v United Malayan Banking Corporation Bhd* [1993] 3 MLJ 36 as follows:

> The principles upon which the court acts in exercising its power under any of the four limbs of O 18 r 19(1) of the RHC are well settled. It is only in plain and obvious cases that recourse should be had to the summary process under this rule (per Lindley MR in *Hubbuck & Sons Ltd v Wilkinson, Heywood & Clark Ltd*), and this summary procedure can only be adopted when it can be clearly seen that a claim or answer is on the face of it 'obviously unsustainable' (see *AG of Duchy of Lancaster v L & NW Rly Co*). It cannot be exercised by a minute examination of the documents and facts of the case, in order to see whether the party has a cause of action or a defence (see *Wenlock v Moloney & Ors*). The authorities further show that if there is a point of law which requires serious discussion, an objection should be taken on the pleadings and the point set down for argument under O 33 r 3 (which is in pari material with our O 33 r 2 of the RHC) (see *Hubbuck & Sons Ltd v Wildinson, Heywood & Clark Ltd*). The court must be satisfied that there is no reasonable cause of action or that the claims are frivolous or vexatious or that the defences raised are not arguable.

[17] A similar principle has been applied in the earlier cases of *Sim Kie Chon v Superintendent of Pudu Prison & Ors* [1985] 2 MLJ 385 and *Golden Century Development Sdn Bhd & Anor v GanHoe & Anor* [1983] 1 MLJ 86.

In *Golden Century Development Sdn Bhd & Anor v GanHoe & Anor* [1983] 1 MLJ 86, Wan Suleiman FCJ expressed the following:

A We think it will suffice for us to refer to the well known authority *Attorney-General of Duchy of Lancaster v London and North Western Railway Co* [1892] 3 Ch 274 in which it was held that the summary procedure under the English rule which identical to ours, can only be adopted when it can be clearly seen that a claim or answer is on the face of it 'obviously unsustainable'.

B

[18] In *The Attorney General, Malaysia v Chiow Thiam Guan* [1983] 1 MLJ 51, Hashim Yeop A Sani J (as he then was) expressed his finding as follows:

> The law to be applied is elementary and has been set out in a number of cases —
C see *Low Yat v GC Grace* [1947] MLJ 80 and *Mooney & Ors v Peat, Marwick, Mitchell & Co & Anor* [1967] 1 MLJ 87. The principle which seems to have been established is that the statement of claim should be struck out only in plain and obvious cases where the judge can say at once that the statement of claim as it stands is insufficient even if proved to entitle the plaintiff to the relief. It follows that so long as the statement of claim discloses some ground of action the mere fact
D that the plaintiff is not likely to succeed is no ground to strike out the statement of claim.

[19] The principles enunciated in these cases point out to one
E unmistakable direction to be considered in an application of this nature ie whether the claim by the plaintiff is groundless by any reason of flaw or fault in law or whether it is untenable because the allegations contained in the statement of claim are so implausible and illogical as to disclose no cause of action.

F

[20] Bearing in mind the above stated principles, its prompts me to go through the pleadings and upon doing so, it is my finding that the plaintiffs' action on the breach of the agreement and/or the administrative arrangement is because of the slander. It is evident from para 8(a) and (b) of the statement
G of claim that the plaintiffs are alleging slanderous statements being made by the defendant. The plaintiffs' complaints are in respect of those slanderous statements. Paragraph 9 of the statement of claim again refer to the 'said words', meaning the defamatory statements imputing the plaintiffs as criminals and as a result of which their character, credit and reputation have
H been brought into public scandal, odium and contempt (see para 10 of the statement of claim). Paragraph 12 and the reliefs sought by the plaintiffs urges this court to restrain the defendant from further publishing the slanderous words against the plaintiffs. In this regard, it is my considered view that the plaintiffs' action is one based on defamation. The issue is purely whether
I those words published as stated in para 8(a) and (b) the statement of claim

are defamatory. The alleged breach arises out of the publication of the slanderous statements.

[21] It is submitted by learned senior federal counsel that the words alleged against the plaintiffs are not defamatory. It states the truth, and I agree. It is a historical fact. The atrocities of the Parti Komunis Malaya is part and parcel of the history of this beloved nation of ours. The court is entitled to take judicial notice of this historical fact. Every responsible citizen of this country will know that, and know who the first plaintiff is and what he was and has done to the country. I cannot understand and it is certainly beyond my comprehension how the plaintiffs can claim that their character, credit and reputation has been brought into public scandal, odium and contempt. The publications made by the defendant are not defamatory to the plaintiffs. It is the truth. On the face of it, I find the plaintiffs claim is clearly unsustainable. It discloses no reasonable cause of action.

[22] I shall now consider the issue of the capacity of the plaintiffs to bring the action.

[23] The plaintiffs' pleading indicate that the first plaintiff is suing in his personal capacity as well as a representative of all members of the Parti Komunis Malaya and all the other relevant parties. It is unclear who these 'other relevant parties' are. This is an unknown party. He is also suing in his capacity as the secretary general of the Parti Komunis Malaya.

[24] The plaintiffs' pleading indicate that the first plaintiff is suing in his personal capacity as well as a representative of all members of the Parti Komunis Malaya and all the other relevant parties. It is unclear who these 'other relevant parties' are. This is an unknown party. He is also suing in his capacity as the secretary general of the Parti Komunis Malaya.

[25] Lord Atkin in the House of Lords' case of *Knupffer v London Express Newspaper Ltd* [1944] AC 116 at p 122 remarked:

> The reason why a libel published of a large or indeterminate number of persons described by some general name generally fails to be actionable is the difficulty of establishing that the plaintiff was, in fact, included in the defamatory statement, for the habit of making unfounded generalisations is ingrained in ill-educated or vulgar minds, or the words are occasionally intended to be a facetious exaggeration.

A Even in such cases words may be used which enable the plaintiff to prove that the words complained of were intended to be published of each member of the group, or at any rate, of himself.

B **[26]** In *Atip bin Ali v Josephine Doris Nunis & Anor* [1987] 1 MLJ 82, Wan Yahya J after quoting *Knupffer v London Express Newspaper Ltd* stated:

C Lastly, I am of the view that representative proceedings cannot be taken in defamation proceedings. No representative action is normally allowed to establish the right of numerous person to recover damages as the sole relief claimed. In a defamation suit the ground of liability for damages must necessarily differ from one person to another.

D **[27]** In the said case, His Lordship also referred to *Daya v Param Sukh* (1888) ILR 11 All 104 and *Brahmanna v Ramakrishnama* (1894) ILR 18 Madras 250. Defamation involves a right in personam and close relationship with the person defamed alone will not give rise to the right on the part of other persons to sue the defendant.

E **[28]** The first plaintiff's attempt of bringing this action as a representative of all members of the Parti Komunis Malaya and all other relevant parties is therefore misconceived.

F **[29]** As to the locus of the second plaintiff suing as the Secretary General of Parti Komunis Malaya, it is trite that an unincorporated association such as the Parti Komunis Malaya must be clothed with authority before it can be considered as a body with legal personality capable of suing and to be sued in its own name either in contract or in tort, which includes of course, an G action of defamation. Parti Komunis Malaya is an unlawful society. It is not a society registered under s 7 of the Societies Act 1966. The second plaintiff can only sue in that capacity if and only if s 9(c) of the same Act has been complied with. There is no evidence to show that the second plaintiff has been so declared by the Registrar of Societies. In the circumstances, I hold H that the second plaintiff lacks capacity (see *Chen Cheng & Anor v Central Christian Church and another appeal* [1996] 1 SLR 313; *Electrical, Electronic, Telecommunication and Plumbing Union v Times Newspapers Ltd & Ors* [1980] QB 585).

I **[30]** For the reasons above stated, it is my conclusion that the statement of claim should be struck out. This is a plain and obvious case which I can say

at once that the statement of claim as it stands is insufficient to entitle the plaintiffs to the reliefs claimed. The defendant's application in encl 21 is hereby allowed in the terms of prayers (1) and (4).

Plaintiffs' claim dismissed and defendant's application allowed.

Reported by Kohila Nesan